



# **GAS ACT, 1988**

**No. 24 of 1988**

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A.D. 1988

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No. 24 of 1988

An Act to regulate the supply of gas; to repeal the Gas Act, 1924 and the South Australian Gas Company Act, 1861; and for other purposes.

[Assented to 21 April 1988]

The Parliament of South Australia enacts as follows:

## PART I PRELIMINARY

### Short title

1. (1) This Act may be cited as the *Gas Act, 1988*.

### Commencement

2. (1) This Act will come into operation on a day to be fixed by proclamation.
- (2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

### Repeal

3. The following Acts are repealed:  
the *Gas Act, 1924*  
the *South Australian Gas Company Act, 1861*.

### Interpretation

4. (1) In this Act, unless the contrary intention appears—  
“apparatus” includes meters, fittings and appliances;  
“appointed day” means a day fixed by proclamation in relation to the provision in which the expression appears (and different days may be so fixed in relation to different provisions);  
“authorized person” means a person authorized by the Minister to exercise the powers of an authorized person under this Act:

**"consumer"** means an occupier of premises to which reticulated gas is supplied:

**"gas"** means a gaseous fuel consisting of hydrocarbons or predominantly of hydrocarbons:

**"gas fitting"** means—

(a) the installation of any pipe or apparatus into which reticulated gas is to be introduced;

(b) the alteration or disconnection of any pipe for carrying reticulated gas or any apparatus into which reticulated gas is introduced:

**"gas reticulation system"** means a system under which consumers are supplied with gas by means of pipes connecting the consumers' premises with a gas mains that passes under a public street, road or place:

**"the holding company"** means SAGASCO Holdings Limited:

**"land"** includes—

(a) any estate or interest in land;

(b) any rights in respect of land:

**"PASA"** means the Pipelines Authority of South Australia:

**"quarter"** means a period of three months commencing on the first day of July, the first day of October, the first day of January, or the first day of April:

**"related corporation"**, in relation to a licensed gas supplier, means—

(a) a body corporate—

(i) of which the licensed gas supplier is a subsidiary;

or

(ii) which is a subsidiary of the licensed gas supplier;

(b) a body corporate in which the licensed gas supplier has a significant shareholding or which has a significant shareholding in the licensed gas supplier:

**"reticulated gas"** means gas supplied by means of a gas reticulation system:

**"road"** means a street, road or thoroughfare (including one that is in the course of construction and not yet available for public use):

**"SAOG"** means South Australian Oil and Gas Corporation Pty. Ltd.:

**"share"** in a body corporate includes any interest in the capital of the body corporate (except such an interest that exists only by way of security):

**"the utility company"** means South Australian Gas Company Limited.

(2) For the purposes of this Act, a person has a significant shareholding in a body corporate if—

(a) that person has a legal or equitable interest in shares in the body corporate or is in a position to control or substantially influence the exercise of rights attaching to ownership of shares in the body corporate;

and

(b) those shares—

(i) represent more than 5 per cent of the total number of issued shares in the body corporate;

(ii) represent more than 5 per cent of the paid-up share capital of the body corporate;

or

- (iii) carry more than 5 per cent of the voting rights exercisable at a general meeting of the body corporate.

(3) For the purposes of this Act, and the accounts of the utility company, an unrealized increase in the value of assets of the utility company will not be regarded as profit.

## PART II

### LICENSED GAS SUPPLIERS

#### DIVISION I—LICENSING

##### Obligation to be licensed

5. A person must not carry on the business of supplying reticulated gas unless licensed to do so under this Part.

Penalty: \$100 000.

##### Application for licence

6. (1) The Minister is the licensing authority to whom applications for licences under this Part are to be made.

(2) The Minister has a discretion to grant or refuse an application for a licence.

(3) Such an application—

(a) must be in a form approved by the Minister;

and

(b) must be supported by such information as the Minister requires.

##### Licence fee

7. (1) A licence fee is payable in respect of each financial year.

(2) Subject to subsection (3), the licence fee is—

(a) five per cent of gross revenue derived by the licensee from the sale of reticulated gas during the previous financial year;

or

(b) if the licensee did not supply reticulated gas throughout the previous financial year, or fails to supply the Minister with satisfactory evidence enabling the calculation of the fee under paragraph (a)—a fee fixed at the Minister's discretion.

(3) The regulations may exclude gas supplied to certain consumers or certain classes of consumers from the calculation of licence fees.

(4) The licence fee is payable in equal instalments—

(a) in relation to a financial year that commences after the grant of the licence—on or before the last day of each quarter of the financial year;

or

(b) in relation to a financial year during the course of which the licence was granted—on or before such dates in that financial year as may be fixed by the Minister.

(5) If an instalment of licence fee is not paid on or before the day on which it becomes payable—

(a) the Minister may recover it from the licensee as a debt;  
and

(b) the Minister has a discretion to suspend or cancel the licence.

(6) In proceedings for recovery of arrears of licence fee, a document apparently signed by the Minister stating the amount of the arrears will be accepted, in the absence of proof to the contrary, as proof of that amount.

#### **DIVISION II—SPECIAL OBLIGATIONS OF LICENSED GAS SUPPLIERS**

##### **Duty to supply information**

8. (1) A licensed gas supplier must, at the request of the Minister, supply the Minister with such information as may be specified in the request relating to—

- (a) the corporate structure of the supplier and any related body corporate;
- (b) shareholding in the supplier and any related body corporate;
- (c) the assets and liabilities (including contingent liabilities) of the supplier;
- (d) the acquisition and supply of gas by the supplier;

or

(e) any matter relevant to the calculation of a licence fee.

(2) A licensed gas supplier that fails to comply with a request under this section within the time allowed in the request is guilty of an offence.

Penalty: \$50 000.

(3) It is a defence to a charge of an offence against subsection (2) to prove that the information sought in the request was not reasonably accessible to the licensed gas supplier.

##### **Investigations**

9. (1) The Minister may appoint an investigator to enquire into, and report on—

(a) the affairs of a licensed gas supplier;

or

(b) any matter affecting presently or prospectively—

(i) the supply of gas within the State;

or

(ii) the price of gas to consumers within the State.

(2) The Auditor-General must, at the request of the Minister, audit the accounts of a licensed gas supplier.

### **PART III**

#### **THE SUPPLY OF RETICULATED GAS**

##### **DIVISION I—SPECIAL POWERS OF LICENSED GAS SUPPLIER**

##### **Compulsory acquisition of land**

10. (1) A licensed gas supplier may compulsorily acquire land required by it for the manufacture, treatment, storage or reticulation of gas.

(2) The *Land Acquisition Act, 1969*, applies to the acquisition of land under subsection (1).

(3) This section does not affect any power to acquire land that exists apart from this section.

**Power to lay pipes, etc., in a street or road****11. (1) A licensed gas supplier—**

(a) may lay or install pipes and apparatus under any public road for the purpose of reticulating gas;

and

(b) may excavate a public road for the purpose of laying or installing pipes or apparatus in pursuance of paragraph (a), or for the purpose of inspecting, repairing or replacing pipes or apparatus previously laid or installed.

(2) The supplier must, at least seven days before it exercises powers conferred by subsection (1) in relation to a road, give to the authority in which the control or management of the road is vested notice of its intention to exercise those powers and of the part of the road to be affected.

(3) Notice is not required under subsection (2) in an emergency or in circumstances of imminent danger to life or property.

(4) The supplier must, as soon as practicable, make good any damage to a road arising from the exercise of powers conferred by this section.

**DIVISION II—POWERS OF ENTRY****Powers of entry, etc.****12. (1) An authorized person may enter premises at any reasonable time for the purpose of—**

(a) examining or testing any part of a gas reticulation system or any apparatus associated with it;

(b) testing the pressure or quality of gas in a gas reticulation system;

(c) taking any action that may be necessary to avert danger from a fault in a gas reticulation system or from abnormal conditions affecting it.

(2) Except in an emergency, an authorized person may only enter residential premises under this section after reasonable notice to the occupier.

(3) A person who obstructs an authorized person in the exercise of powers conferred by this section is guilty of an offence.

Penalty: \$10 000.

**Powers of inspection****13. (1) An employee of a licensed gas supplier, who is authorized by the supplier to do so, may at any reasonable time—**

(a) enter premises to which gas is supplied for the purpose of inspecting or repairing pipes or apparatus of the supplier in those premises;

(b) carry out any work necessary to obtain access to any such pipes or apparatus;

and

(c) inspect or repair the pipes or apparatus (but any structural damage to the premises resulting from the exercise of any such power must be made good).

(2) Where, in the opinion of an employee who has entered premises in accordance with this section, an apparatus is unsafe, the employee or the supplier may interrupt or disconnect the supply of gas to those premises.

(3) An employee who has entered, or proposes to enter, premises in pursuance of this section must, at the request of the owner or occupier of the premises, produce a certificate

of authority, signed by an officer of the supplier, certifying that the employee is authorized by the supplier to exercise the powers conferred by this section.

(4) A person who prevents an employee from exercising powers conferred by this section, or hinders the exercise of those powers, is guilty of an offence.

Penalty: \$2 000.

### **DIVISION III—PROTECTION OF PROPERTY IN GAS RETICULATION SYSTEM**

#### **Property of licensed gas supplier does not merge with land**

14. Unless a licensed gas supplier agrees in writing to the contrary, any pipes or apparatus laid or installed by the supplier remain the property of the supplier.

#### **Restriction on dealings affecting gas reticulation system**

15. (1) A licensed gas supplier cannot, without the Minister's consent, dispose of its gas reticulation system or any part of its gas reticulation system (but this subsection does not prevent the disposal of apparatus or equipment in the ordinary course of its business as the operator of a gas reticulation system).

(2) The following property of a licensed gas supplier cannot be seized and dismantled in execution of a judgment—

(a) a gas reticulation system;

(b) any apparatus associated with a gas reticulation system.

(3) This section does not prevent the sale of a gas reticulation system as a going concern in execution of a judgment.

### **DIVISION IV—PRICE OF RETICULATED GAS**

#### **Fixation of maximum prices for reticulated gas**

16. (1) The Minister may, by notice in the *Gazette*, fix the maximum prices (which may vary according to factors stated in the notice) that a licensed gas supplier may charge for reticulated gas.

(2) Maximum prices may only be fixed under this section after consideration of a recommendation from the Prices Commissioner.

(3) If an agreement exists between the State and a licensed gas supplier as to the factors to which the Prices Commissioner must have regard in making a recommendation under this section, the Prices Commissioner is bound by the terms of that agreement.

(4) The Minister—

(a) must, at the request of a licensed gas supplier, have the Prices Commissioner conduct a review of the maximum prices fixed under this section;

and

(b) must, within 10 weeks of the date of the request or such longer period as may be agreed by the licensed gas supplier—

(i) inform the supplier of the result of the review;

and

(ii) make any adjustment to the maximum price of gas that the Minister considers desirable after consideration of the Prices Commissioner's recommendation.

(5) A licensed gas supplier must not charge a price for reticulated gas in excess of the relevant maximum fixed under this section.



Penalty: \$10 000.

(6) If a licensed gas supplier is convicted of an offence against subsection (5), any amount charged in excess of the permitted maximum must be credited to the accounts of the consumers against whom the excessive charges were made.

#### **Power to cut off gas supply**

17. (1) Subject to the terms of any agreement with a licensed gas supplier to the contrary, the occupier of premises is liable to the supplier for the price of reticulated gas supplied to the premises.

(2) Where—

- (a) the licensed gas supplier renders a proper account to the occupier for gas supplied to premises;
- (b) the account is not paid on or before a date for payment specified in the final notice of the account (which must be a date falling at least 7 days after the date of the notice),

the supplier may, after giving not less than 48 hours' notice in writing to the occupier, cut off the supply of gas to the premises.

(3) Where a licensed gas supplier cuts off the supply of gas in pursuance of this section, an employee of the supplier, who is authorized by the supplier to do so, may, after giving at least 48 hours' notice in writing both to the owner and the occupier of the premises, enter the premises and remove pipes and apparatus belonging to the supplier.

(4) An employee of the supplier who has entered, or proposes to enter, premises in pursuance of this section must, at the request of the owner or occupier of the premises, produce a certificate of authority, signed by an officer of the supplier, certifying that the employee is authorized by the supplier to exercise the powers conferred by subsection (3).

(5) A person who prevents an employee of the supplier from exercising powers conferred by this section, or hinders the exercise of those powers, is guilty of an offence.

Penalty: \$2 000.

(6) A notice under this section may be served personally, by post, or by affixing it in a prominent position on the premises to which it relates.

#### **Testing of metering equipment**

18. (1) A licensed gas supplier must, at the request of a consumer, have a test made of the accuracy of metering equipment installed to measure the consumer's consumption of gas.

(2) A request under this section must be accompanied by the prescribed fee.

(3) The consumer must be supplied with a written report on the results of the test.

(4) If, on the test, the metering equipment does not function within prescribed tolerances of accuracy—

(a) it must be replaced at the expense of the licensed gas supplier;

and

(b) the fee paid by the consumer must be refunded.

(5) In proceedings for recovery of the price of gas supplied to any premises, the accuracy of metering equipment installed to measure the volume of gas supplied will be presumed in the absence of proof to the contrary.

## DIVISION V—TEMPORARY GAS RATIONING

**Temporary gas rationing**

19. (1) If for any reason the volume of gas available for supply through a gas reticulation system is insufficient to meet the requirements of all consumers who draw gas from that system—

- (a) the Minister may, by notice in writing given personally or by post to the licensed gas supplier by which the system is operated, give directions to ensure the most efficient and appropriate use of the available gas;

and

- (b) the Minister may, by notice published in such manner as may be appropriate in the circumstances, direct consumers not to draw gas from the system except for the purposes (if any) allowed by the directions.

(2) A direction under this section will operate for a period (not exceeding 30 days) specified in the notice by which the direction is given.

(3) No civil liability arises from compliance with a direction under this section.

(4) A person who fails to comply with a direction under this section is guilty of an offence.

**Penalty—**

- (a) if the offender is a licensed gas supplier—\$50 000;  
(b) if the offender is a consumer—\$2 000.

## PART IV

## CORPORATE RESTRUCTURING AND REGULATION

## DIVISION I—CORPORATE RESTRUCTURING

**South Australian Gas Company to become SAGASCO Holdings Limited**

20. (1) On the appointed day the South Australian Gas Company becomes (without change of corporate identity) SAGASCO Holdings Limited, a public company limited by shares, incorporated under the Companies (South Australia) Code.

(2) The holding company will lodge a copy of its memorandum and articles for registration by the Corporate Affairs Commission.

(3) The Corporate Affairs Commission will, on application by the holding company, issue a certificate of incorporation indicating that the holding company was incorporated by the *South Australian Gas Company Act, 1861*, and continues in existence as a public company limited by shares incorporated under the Companies (South Australia) Code.

**Special provision as to shareholding in the holding company**

21. On the appointed day—

- (a) each Class A and Class B share in the capital of the holding company is converted into an ordinary share of ten cents;  
(b) the directors of the holding company must issue to the South Australian Government Financing Authority 56 166 583 ordinary shares of ten cents each in the capital of the company.

**Transfer of assets**

22. (1) The shares in SAOG held by PASA immediately before the appointed day (33 474 500 shares of \$1 each) vest in the holding company on the appointed day.

(2) The property identified in an inventory approved by the holding company and the Minister, and published in the *Gazette*, vests in the utility company on the appointed day.

(3) The Registrar-General will, on the application of the utility company and production of the appropriate duplicate certificates of title or other relevant documents, register the utility company as the proprietor of any land that vests in it under subsection (2).

(4) The holding company's licence to supply reticulated gas is, on the appointed day, transferred to the utility company.

(5) The licence fee will be calculated as if sales of reticulated gas made before the appointed day had been made by the utility company.

(6) The transfers of assets made by this section are exempt from stamp duty but the holding company must, on or before a day notified by the Treasurer to the company, pay to the Treasurer \$1.31 m in lieu of stamp duty.

(7) After the vesting of property under this section, the Minister will, on request by the holding company or the utility company, issue a certificate that specified property vested (without giving rise to any liability to stamp duty) in the holding company or the utility company (as the case requires) on a specified date and any judicial or administrative authority or official to whom such a certificate is presented must accept it as conclusive proof of the facts so certified.

#### **Transfer of employees**

23. (1) The Minister—

(a) will publish a notice in the *Gazette* containing a list of employees of the holding company who are to become employees of the utility company;

and

(b) may publish a notice in the *Gazette* containing a list of employees of SAOG who are to become employees of the holding company, the utility company or any other subsidiary of the holding company.

(2) As from a date stated in a notice published under subsection (1), the employees named in the list become employees of the company named in the notice.

(3) A change in employment effected under this section does not affect terms and conditions of employment and the employee retains existing and accruing rights in respect of recreation leave, sick leave and long service leave.

### **DIVISION II—CORPORATE REGULATION**

#### **Restrictions on share dealings**

24. The holding company cannot sell, assign, transfer, charge or otherwise deal with its shares in the utility company except in pursuance of a special resolution passed at a general meeting of the holding company's shareholders.

#### **Certain profits of utility company to be transferred to reserve**

25. (1) If the utility company's profit for a financial year (after making provision for income tax) exceeds the prescribed amount, the excess must be transferred to a separate account (the "statutory reserve account") established for the purposes of this section.

(2) Money from the statutory reserve account—

(a) must not be dealt with except as authorized by the Minister;

and

(b) if the Minister directs that it be applied in a particular manner—must be applied in accordance with the Minister's direction.

(3) The prescribed amount is the lesser of the following amounts:

$$(a) \quad A = E \times \frac{X + 2}{100} + \frac{1}{2} Z$$

$$(b) \quad A = \frac{2}{5} G \times \frac{X + 2}{100} + \frac{1}{2} Z$$

Where—

A is the amount.

E is the amount of the company's excess of assets over liabilities (averaged by aggregating the relevant amount as at the beginning and the end of the financial year and dividing by two) as shown in the audited accounts for the financial year.

G is the amount of the company's gross assets (averaged by aggregating the relevant amount as at the beginning and the end of the financial year and dividing by two) as shown in the audited accounts for the financial year.

X is the initial percentage rate of yield on Commonwealth Treasury Bonds or Commonwealth Inscribed Stock with a term of five years or more last issued for public subscription or, where there is more than one such percentage rate, the average of those rates.

Z is the component (if any) of the profit referred to above that can be shown by the utility company to the satisfaction of the Minister to be attributable to improvements in efficiency.

(4) A reference in this section to a financial year, is a reference to any period that constitutes a financial year of the utility company for the purposes of the Companies (South Australia) Code.

#### **Restriction on dealings by utility company**

26. The utility company cannot enter into a transaction with, or for the benefit of, the holding company unless—

(a) the transaction is authorized by the Minister;

or

(b) the terms of the transaction are such as would normally be expected in ordinary commercial dealings between unrelated parties.

#### **One director of the utility company to be appointed by the Minister**

27. The articles of the utility company must contain provision for the appointment of one director of the company (and the successors in office of that director) by the Minister.

## **PART V**

### **MISCELLANEOUS**

#### **Gas fitters**

28. (1) The *Gas Fitters Examining Board* is established.

(2) The constitution and powers of the Board are as set out in the regulations.

(3) Subject to the regulations, a person who carries out work in the nature of gas fitting without holding registration in accordance with the regulations of the class appropriate to the work is guilty of an offence.

Penalty: \$10 000.

**Unlawful diversion of gas**

29. A person who, without the consent of a licensed gas supplier diverts gas from any pipe or apparatus laid or installed by the supplier is guilty of an offence.

Penalty: \$10 000.

**Wilful damage**

30. (1) A person who, without the consent of a licensed gas supplier, wilfully damages, interferes with or removes any pipes, apparatus or equipment belonging to the supplier, or under its control, is guilty of an offence.

Penalty: \$10 000.

(2) A person who, without the consent of a licensed gas supplier, wilfully uses apparatus or equipment belonging to the supplier contrary to instructions given by the supplier or clearly indicated on the apparatus or equipment itself, is guilty of an offence.

Penalty: \$10 000.

(3) A person who, without the consent of a licensed gas supplier wilfully—

(a) operates any equipment that is the property of the supplier;

or

(b) shuts off or restricts the flow of gas through any pipe or apparatus that is the property of the supplier,

is guilty of an offence.

Penalty: \$10 000.

(4) The court before which a person is convicted of an offence against this section may order the convicted person to pay the supplier such compensation as it thinks fit.

**Exclusion of certain liability**

31. A licensed gas supplier is not liable for loss or damage resulting from cutting off, or failing to supply, gas to any premises.

**Service**

32. A notice required or permitted to be served by this Act may be served personally or by post.

**Summary Offences**

33. (1) An offence against this Act is a summary offence.

(2) If, in proceedings for an offence against this Act, the defendant is alleged to have acted without a consent required by this Act, the absence of consent will be presumed unless it is established that the necessary consent was in fact given.

**Regulations**

34. (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1), those regulations may—

(a) require a licensed gas supplier to install and operate specified equipment to monitor the pressure and quality of gas supplied through a gas reticulation system;

(b) prescribe (within specified tolerances) the pressure at which gas must be supplied through a gas reticulation system;

- (c) prescribe the criteria of composition and quality with which gas supplied through a gas reticulation system must comply;
  - (d) require a licensed gas supplier to have metering equipment tested before installation and to have periodic tests of its accuracy made subsequently;
  - (e) prescribe penalties (not exceeding \$2 000) for contravention of, or non-compliance with, a regulation.
- (3) The regulations may—
  - (a) vary in their operation according to time, place or circumstance;
  - (b) confer discretionary powers.

## SCHEDULE

*Transitional Provisions*

1. A licence in force under the *Gas Act, 1924*, immediately before the commencement of this Act, will be taken to be a licence granted under this Act.
2. Where, immediately before the commencement of this Act, a person held registration of a particular class as a gas fitter under the regulations to the *Gas Act, 1924*, that person will be taken to have been granted, upon the commencement of this Act, registration of the corresponding class under the regulations to this Act.
3. Section 25 does not apply in relation to a financial year of the utility company that commenced before the commencement of this Act.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor